

111TH CONGRESS  
2D SESSION

# S. 3915

To amend title XVIII of the Social Security Act to improve the recruitment and retention of physicians under the Medicare program.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mrs. LINCOLN introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend title XVIII of the Social Security Act to improve the recruitment and retention of physicians under the Medicare program.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Medicare Rural Physi-  
5       cian Recruitment and Retention Act of 2010”.

6       **SEC. 2. FINDINGS.**

7       Congress makes the following findings:

8               (1) The United States is facing shortages in a  
9       wide range of health workforce professions, including  
10      as many as 91,500 physicians, consisting of 46,100

1 specialists and 45,400 primary care physicians, by  
2 2020. Many rural and other underserved areas con-  
3 tinue to experience chronic shortages.

4 (2) These shortages will be exacerbated as mil-  
5 lions of previously uninsured Americans gain access  
6 to health insurance and the “Baby Boomer” genera-  
7 tion enters the Medicare program in greater num-  
8 bers.

9 (3) To address the physician shortage, United  
10 States medical schools have already started fulfilling  
11 their commitment to expanding class size by 30 per-  
12 cent by the year 2015. However, the Medicare pro-  
13 gram has not yet increased the number of approved  
14 medical residency training positions it helps support  
15 in order to accommodate a 30 percent increase in  
16 medical school graduates.

17 (4) From 1966 through 1991, Medicare physi-  
18 cian payments reflected physician charges for health  
19 care services. The Omnibus Budget Reconciliation  
20 Act of 1989 (Public Law 101–239) mandated the  
21 creation of a national Medicare physician fee sched-  
22 ule, which was implemented in 1992.

23 (5) As mandated by the Balanced Budget Act  
24 of 1997 (Public Law 105–33), the statutory method  
25 for determining annual updates to the Medicare phy-

1       sician fee schedule, known as the sustainable growth  
2       rate system, has resulted in a reduction in physician  
3       reimbursement rates each year since 2002. With the  
4       exception of 2002, when a 4.8 percent decrease was  
5       applied, Congress has passed a series of bills to over-  
6       ride the reductions.

7           (6) Although a number of modifications to the  
8       Medicare sustainable growth rate system have been  
9       proposed, Congress has yet to pass legislation that  
10      would provide for a long-term alternative to the cur-  
11      rent system.

12          (7) The Medicare physician fee schedule estab-  
13      lishes payment rates for more than 7,000 services.  
14      Payments for each service on the fee schedule is  
15      based on 3 relative value units that correspond to  
16      the 3 physician payment components of physician  
17      work, practice expense, and malpractice expense.

18          (8) Each relative value unit is geographically  
19      adjusted to reflect the cost of providing a particular  
20      service in a particular location (a “locality”). Physi-  
21      cian payment localities are primarily consolidations  
22      of the carrier-defined localities established in 1966.

23          (9) Medicare’s geographic adjustment for a par-  
24      ticular physician payment locality is determined  
25      using 3 Geographic Practice Cost Indices that also

1 correspond to the 3 Medicare physician payment  
2 components of physician work, practice expense, and  
3 malpractice expense.

4 (10) In general, Medicare Geographic Practice  
5 Cost Indices (and thus, reimbursements) are less in  
6 rural areas than in urban areas largely because rural  
7 cost-of-living is estimated to be lower.

8 (11) Medicare Geographic Practice Cost Indices  
9 are based on 1990 earnings of professionals with 5  
10 or more years of post high school education, not cur-  
11 rent physician earnings, and the office rent portion  
12 of the practice expense Geographic Practice Cost  
13 Index is based on 2000 residential apartment rental  
14 data from the Department of Housing and Urban  
15 Development, proxy data used in place of actual na-  
16 tional data for physician office rents.

17 (12) Rural physician employers and rural com-  
18 munities recruiting physicians must pay salaries that  
19 are competitive in regional and national, not local,  
20 markets.

21 (13) Though the percentage difference may  
22 seem small, the elderly represent a higher percent of  
23 the rural population. Consequently, Medicare pa-  
24 tients will represent a greater percentage of a rural  
25 physician's practice, and differences in payment due

to variation in Medicare Geographic Practice Cost Indices represent many thousands of reimbursement dollars.

(14) Furthermore, commercial insurers often reimburse physicians at rates directly related to Medicare’s fee schedule. As a result, the impact of any Medicare payment disparity is potentially extended to non-Medicare payors as well.

(15) Recruitment and retention of rural physicians remains problematic.

## **TITLE I—RURAL PHYSICIAN RETENTION IN MEDICARE**

### **SEC. 101. MEDICARE PHYSICIAN FEE SCHEDULE UPDATE.**

(a) UPDATE.—

(1) REMAINING PORTION OF 2010.—Section 1848(d)(11) of the Social Security Act (42 U.S.C. 1395w-4(d)(11)) is amended—

(A) in the heading, by striking “NOVEMBER” and inserting “DECEMBER”;

(B) in subparagraph (A), by striking “November 30” and inserting “December 31”; and

(C) in subparagraph (B)—

(i) in the heading, by striking “REMAINING PORTION OF 2010” and inserting “2011”; and

1 (ii) by striking “the period beginning  
 2 on December 1, 2010, and ending on De-  
 3 cember 31, 2010, and for”.

4 (2) FOR 2011 AND SUBSEQUENT YEARS.—Sec-  
 5 tion 1848(d) of the Social Security Act (42 U.S.C.  
 6 1395w-4(d)) is amended by adding at the end the  
 7 following new paragraph:

8 “(12) UPDATE FOR 2011 AND SUBSEQUENT  
 9 YEARS.—The update to the single conversion factor  
 10 established in paragraph (1)(C) for 2011 and each  
 11 subsequent year shall be the percentage increase in  
 12 the MEI (as defined in section 1842(i)(3)) for that  
 13 year.”.

14 (b) CONFORMING SUNSET OF SUSTAINABLE  
 15 GROWTH RATE.—Section 1848(f)(1)(B) of the Social Se-  
 16 curity Act (42 U.S.C. 1395w-4(f)(1)(B)) is amended by  
 17 inserting “(ending with 2008)” after “each succeeding  
 18 year”.

19 **SEC. 102. RECOGNITION OF EQUALITY OF PHYSICIAN WORK**  
 20 **IN ALL GEOGRAPHIC AREAS UNDER THE**  
 21 **MEDICARE PHYSICIAN FEE SCHEDULE.**

22 Section 1848(e)(1) of the Social Security Act (42  
 23 U.S.C. 1395w-4(e)(1)) is amended—

24 (1) in subparagraph (A), in the matter pre-  
 25 ceding clause (i), by striking “subparagraphs (B)”

1 through “the Secretary” and inserting “the suc-  
 2 ceeding provisions of this paragraph, the Secretary”;  
 3 and

4 (2) in subparagraph (E)—

5 (A) by striking “and before January 1,  
 6 2011,”; and

7 (B) by adding at the end the following new  
 8 sentence. “For services furnished on or after  
 9 January 1, 2011, the preceding sentence shall  
 10 not be applied in a budget neutral manner.”.

11 **SEC. 103. REVISIONS TO THE PRACTICE EXPENSE GEO-**  
 12 **GRAPHIC ADJUSTMENT UNDER THE MEDI-**  
 13 **CARE PHYSICIAN FEE SCHEDULE.**

14 (a) REPEAL.—Effective as if included in the enact-  
 15 ment of the Patient Protection and Affordable Care Act  
 16 (Public Law 111–148), the provisions of, and amendments  
 17 made by, sections 3102(b) and 10324(c) of such Act and  
 18 section 1108 of the Health Care and Education Reconcili-  
 19 ation Act of 2010 (Public Law 111–152) are repealed.

20 (b) ESTABLISHMENT OF FLOOR.—Section  
 21 1848(e)(1) of the Social Security Act (42 U.S.C. 1395w–  
 22 4(e)(1)) is amended by adding at the end the following  
 23 new subparagraph:

24 “(F) FLOOR AT 1.0 ON PRACTICE EXPENSE  
 25 GEOGRAPHIC INDEX.—After calculating the

practice expense geographic index in subparagraph (A)(i), for purposes of payment for services furnished on or after January 1, 2010, the Secretary shall increase the practice expense geographic index to 1.0 for any locality for which such practice expense geographic index is less than 1.0. The preceding sentence shall not be applied in a budget neutral manner.”.

## **TITLE II—RURAL PHYSICIAN RECRUITMENT IN MEDICARE**

### **SEC. 201. DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.**

(a) IN GENERAL.—Section 1886(h) of the Social Security Act (42 U.S.C. 1395ww(h)) is amended—

(1) in paragraph (4)(F)(i), by striking “and (8)” and inserting “, (8), and (9)”;

(2) in paragraph (4)(H)(i), by striking “and (8)” and inserting “, (8), and (9)”;

(3) in paragraph (7)(E), by striking “this paragraph, paragraph (8),” and inserting “paragraph, paragraph (8), paragraph (9),”; and

(4) by adding at the end the following new paragraph:

“(9) DISTRIBUTION OF ADDITIONAL RESIDENCY POSITIONS.—



1           “(A) NUMBER AVAILABLE FOR DISTRIBUTION.—The number of additional residency po-  
2           sitions available for distribution under subparagraph (B) shall be an amount that the Sec-  
3           retary determines would result in a 15 percent  
4           increase in the aggregate number of full-time  
5           equivalent residents in approved medical resi-  
6           dency training programs (as determined based  
7           on the most recent cost reports available at the  
8           time of distribution).  
9

10           “(B) DISTRIBUTION.—The Secretary shall  
11           increase the otherwise applicable resident limit  
12           for each qualifying hospital that submits an ap-  
13           plication under this subparagraph by such num-  
14           ber as the Secretary may approve for portions  
15           of cost reporting periods occurring on or after  
16           July 1, 2011. The aggregate number of in-  
17           creases in the otherwise applicable resident  
18           limit under this subparagraph shall be equal to  
19           the number of additional residency positions  
20           available for distribution under subparagraph  
21           (A).  
22

23           “(C) CONSIDERATIONS IN DISTRIBUTION.—In determining for which hospitals the  
24           increase in the otherwise applicable resident  
25

1 limit is provided under subparagraph (B), the  
2 Secretary shall take into account the dem-  
3 onstrated likelihood of the hospital filling the  
4 positions within the first 3 cost reporting peri-  
5 ods beginning on or after July 1, 2011, made  
6 available under this paragraph, as determined  
7 by the Secretary.

8 “(D) PRIORITY FOR CERTAIN AREAS.—

9 “(i) IN GENERAL.—In determining for  
10 which hospitals the increase in the other-  
11 wise applicable resident limit is provided  
12 under subparagraph (B), the Secretary  
13 shall give preference to hospitals located in  
14 States that are in the lowest quartile of ac-  
15 tive physician-to-population ratio.

16 “(ii) HOSPITALS IN OTHER STATES.—

17 In the case where the Secretary does not  
18 distribute all of the positions available for  
19 distribution under subparagraph (A) to  
20 hospitals located in States described in  
21 clause (i), the Secretary shall distribute  
22 the remaining positions available to quali-  
23 fying hospitals in other States.

24 “(E) APPLICATION OF PER RESIDENT  
25 AMOUNTS FOR PRIMARY CARE AND NONPRI-

1           MARY CARE.—With respect to additional resi-  
 2           dency positions in a hospital attributable to the  
 3           increase provided under this paragraph, the ap-  
 4           proved FTE resident amounts are deemed to be  
 5           equal to the hospital per resident amounts for  
 6           primary care and nonprimary care computed  
 7           under paragraph (2)(D) for that hospital.

8           “(F) DEFINITIONS.—In this paragraph:

9           “(i) REFERENCE RESIDENT LEVEL.—

10           “(I) IN GENERAL.—Except as  
 11           otherwise provided in subclause (II),  
 12           the reference resident level specified in  
 13           this clause for a hospital is the resi-  
 14           dent level for the most recent cost re-  
 15           porting period of the hospital ending  
 16           on or before the date of enactment of  
 17           this paragraph, for which a cost re-  
 18           port has been settled (or, if not, sub-  
 19           mitted (subject to audit)), as deter-  
 20           mined by the Secretary.

21           “(II) USE OF MOST RECENT AC-  
 22           COUNTING PERIOD TO RECOGNIZE EX-  
 23           PANSION OF EXISTING PROGRAM OR  
 24           ESTABLISHMENT OF NEW PRO-  
 25           GRAM.—If a hospital submits a timely

1 request to increase its resident level  
2 due to an expansion of an existing  
3 residency training program or the es-  
4 tablishment of a new residency train-  
5 ing program that is not reflected on  
6 the most recent cost report that has  
7 been settled (or, if not, submitted  
8 (subject to audit)), after audit and  
9 subject to the discretion of the Sec-  
10 retary, the reference resident level for  
11 such hospital is the resident level for  
12 the cost reporting period that includes  
13 the additional residents attributable to  
14 such expansion or establishment, as  
15 determined by the Secretary.

16 “(ii) RESIDENT LEVEL.—The term  
17 ‘resident level’ has the meaning given such  
18 term in paragraph (7)(C)(i).

19 “(iii) OTHERWISE APPLICABLE RESI-  
20 DENT LEVEL.—The term ‘otherwise appli-  
21 cable resident limit’ means, with respect to  
22 a hospital, the limit otherwise applicable  
23 under subparagraphs (F)(i) and (H) of  
24 paragraph (4) on the resident level for the  
25 hospital determined without regard to this

1 paragraph but taking into account para-  
 2 graphs (7)(A) and (8)(A)”.

3 (b) IME.—

4 (1) IN GENERAL.—The second sentence of sec-  
 5 tion 1886(d)(5)(B)(v) of the Social Security Act (42  
 6 U.S.C. 1395ww(d)(5)(B)(v)) is amended to read as  
 7 follows: “The provisions of subsections (h)(4)(H)(vi),  
 8 (h)(7), (h)(8), and (h)(9) shall apply with respect to  
 9 the first sentence of this clause in the same manner  
 10 as they apply with respect to subsection  
 11 (h)(4)(F)(i).”.

12 (2) CONFORMING AMENDMENT.—Section  
 13 1886(d)(5)(B)(x) of the Social Security Act (42  
 14 U.S.C. 1395ww(d)(5)(B)(x)), as added by section  
 15 5503(b)(2) of the Patient Protection and Affordable  
 16 Care Act (Public Law 111–148) is redesignated as  
 17 clause (xi) and amended by striking “subsection  
 18 (h)(8)(B)” and inserting “subsection (h)(8)(B) or  
 19 (h)(9)(B)”.

20 (c) CONFORMING AMENDMENT.—Section 422(b)(2)  
 21 of the Medicare Prescription Drug, Improvement, and  
 22 Modernization Act of 2003 (Public Law 108–173) is  
 23 amendment by striking “paragraphs (7) and (8)” and in-  
 24 serting “paragraphs (7), (8), and (9)”.

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